IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.63 OF 2005
IN
NOTICE OF MOTION NO.181 OF 2004
IN
SUIT NO.3954 OF 2003

Amarnath Shroff & Ors. ...Appellants
Ori.Defts.

V/s.

Hotel & Resort Ventures (P) Ltd. & Anr. ...Respondents
Ori.Plffs.

Mr.Chirag Balsara i/b N.Shah & Himayatullah for the Appellants.

Mr.I. Chagla, Senior Counsel with Mr.R. Chagla for the Respondent.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 3RD MARCH, 2005.

P.C. :

. Heard advocates.

2. This Appeal is directed against the order of the learned single Judge granting attachment before judgment of the properties of the Defendants. The suit of the Plaintiffs is for recission/cancellation of the agreement dated 20th September, 1997 and for a money decree of refund of Rs.23.092 crores with

interest which was paid by the Plaintiffs to the Defendants under the aforesaid agreement. The Plaintiffs in support of Notice of Motion have made categorical allegation that this is the only property of the Defendants and the property is likely to be sold by the Defendants to defeat the execution of a money decree that may be passed by this Court in favour of the Plaintiffs.

3. Notice of Motion was duly served upon the Defendants but the Defendants failed to file affidavit in reply and consequently the allegation made in the affidavit in support have gone uncontroverted.

4. The only submission that was made before the learned single Judge was that the Defendants have taken out an application for revoking the leave granted under Clause 12 of the Letters Patent and therefore, hearing of the Notice of Motion should be postponed. The learned Judge on considering the agreement especially clause 30 thereof came to a prima-facie conclusion that the Court in Bombay will have jurisdiction to entertain the suit.

5. Mr.Balsara, the learned counsel appearing for the Appellants sought to argue that there is no proof

that the Defendants intended to transfer the property with a view to defeat the decree that may be passed in favour of the Plaintiffs and in absence of such proof, the learned single Judge ought not to have granted Notice of Motion. No such contention was raised before the single Judge. In any event since no reply was filed to the Notice of Motion the averments made in the affidavit in support must be accepted at its face value.

6. Mr.Balsara also argued that the observations made by the learned single Judge on the issue of jurisdiction might affect Chamber Summons No.1360 of 2004 which is taken out by the Defendants for revocation of the leave. The apprehension of the learned counsel for the Appellants is not well founded as the findings recorded by the learned single Judge on the issue of jurisdiction are only prima-facie and tentative findings. In any event it is clarified the findings of the learned single Judge will not affect the rights and contentions of the parties in the Chamber Summons and the said Chamber Summons shall be disposed of on its own merits.

7. In the result, Appeal is dismissed.